

VOL. I
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Exhibits: None

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04CV11557

JOSEPH BOOK,

Plaintiff

vs.

DEPARTMENT OF STATE POLICE,
COMMONWEALTH OF MASSACHUSETTS,
STATE TROOPER KURT M. FERRAZZANI,
STATE TROOPER SMITH, STATE
TROOPER MCKENZIE, AND STATE
TROOPER HENNIGAN,

Defendants

Deposition of ALBERT MCKENZIE, a witness called

18 by counsel for the Plaintiff, pursuant to the

19 applicable rules, before Lorreen Hollingsworth,

20 CSR/RPR, CSR NO. 114793, and Notary Public in a

20 CSR/RPR, CSR NO. 114793, and Notary Public in and for

21 the Commonwealth of Massachusetts, at the Offices of

22 Hinckley, Allen & Snyder, LLP, 28 State Street,

23 Boston, Massachusetts, on Monday, September 18, 2006,

24 at 10:30 a.m.

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1 Q	So he said -- he might have had -- strike that.	1	the road.		
2	If I understand you, he might have said, I might have had a drink or he might have said, I might have had a sip of something?	2 Q	How far did he get in the alphabet?		
3		3 A	I don't recall.		
4		4 Q	How much of the alphabet did he recite?		
5		5 A	I don't recall.		
6		6 Q	What letters did he stumble on?		
7 A	A sip of a drink, something to that effect.	7 A	I don't recall.		
8 Q	Did you ask him how much?	8 Q	How did that portion of the test end, with him saying, I can't remember the rest, or him just stopping or something else?		
9 A	Well, I asked him, yeah -- that was his answer, the sip or a drink. That was his answer to that question, yeah, how much did you have to drink.	10 A	Yeah, I don't recall. He just never completed the alphabet.		
11		11 Q	You mean -- did you form an opinion as to whether he couldn't continue because he was unable to or because he didn't think it was necessary or because he didn't think you wanted him to?		
12		12	What was your -- did you form an opinion as to why he didn't complete the alphabet?		
13 Q	Did you ask him what he might have had a sip of?	13 A	I think he thought it was a joke.		
14		14 Q	Did you form an opinion as to whether he could not complete it or that he didn't want to complete it or he didn't think it		
15 A	I believe I did.				
16 Q	What did he say?				
17 A	You know, I don't recall exactly, maybe something -- it might have been a beer or a mixed drink, something to that effect. But I don't recall exactly what he said.				
18					
19					
20					
21 Q	Do you recall him saying, I might have had a beer or a mixed drink?				
22					
23 A	He said he had a drink. That specifically. He said that. I remember that, a drink or				
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1	a sip of a drink, something to that effect. I don't recall if he said a beer or if he said he had a hard drink, like hard alcohol.	1	was necessary? Did you form an opinion on any of those?		
2		2	I think he thought it wasn't necessary.		
3		3 A	Did you form an opinion as to whether he could have completed the alphabet?		
4		4 Q	No.		
5 Q	And what did you do next?	5 A	Did you ask him to complete the alphabet?		
6 A	I asked him if he would do some field sobriety tests.	6 Q	I asked him to just say the alphabet.		
7		7 A	That's what I do with everybody.		
8 Q	And what did he say?	8 Q	Did you say, Mr. Book, I need to ask you to recite the alphabet? At some point, I understand, he stopped, to your memory?		
9 A	He said he would.	9	10 A	That, I can recall, yeah. He never completed the alphabet, is what I'm saying.	
10 Q	And what happened then?	11 Q	15 Q	So at some point he stopped --	
11 A	He did the field sobriety. I asked him to state the alphabet.	12 A	16 A	Yeah.	
12		13 Q	17 Q	-- somewhere in the process of reciting the alphabet.	
13 Q	What happened?	14 A	18	At the point where he stopped, did you ask him to complete that exercise?	
14 A	He didn't complete the alphabet.	15 Q	19	21 A	I don't recall if I did or not.
15 Q	Do you remember giving him that?	16 Q	20	22 Q	What happened next?
16 A	That's the first test I give. I do.	17 Q	21 A	23 A	Oh, the next test is the one-leg stand.
17 Q	Do you remember giving Mr. Book that?	18 Q	22 Q	24 Q	And what happened with that?
18 A	Yes. I asked him to recite the alphabet.				
19 Q	Where were you when you asked him to recite the alphabet?				
20					
21 A	I was right in front of him, pretty much.				
22 Q	Were you at his car, or were you at the guardrail, where were you?				
23					
24 A	We were more towards the guardrail, towards				

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1 A I explained it and demonstrated it.
 2 Q And what happened?
 3 A He couldn't do it.
 4 Q Can you be more specific in terms of what happened?
 5 A I think he thought it was a joke again. I think he was, like, I can't do it.
 6 Q Did he try?
 7 A I don't believe he did.
 8 Q Did he say he couldn't do it because of his age or his physical condition or that he didn't want to? Tell me as much as you recall.
 9 I'm sorry, let me back up.
 10 Do you have a recollection of asking him -- strike that.
 11 Do you have a recollection of describing for him the one-leg stand test?
 12 A Of me describing it?
 13 Q Yes.
 14 A Yes.
 15 Q Do you have a clear recollection of doing that?
 16 A I do it to everyone.

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1 legs approximately 6 inches off the ground, and count out loud to 30.
 2 I don't recall if I actually modified the test. I might have. I don't recall if I did. And I demonstrated -- I normally only go to the count of ten when I do that and I normally keep my foot up and ask them, Do you think you can do the test? Would you like to continue?
 3 And I think Mr. Book thought it was a joke.
 4 Q What did he say to you --
 5 A I don't recall. Then he laughed, best I can remember. I don't think he --
 6 Q What did he say? What do you recall him saying, if anything?
 7 A I don't recall anything specific at that point. He just wanted to go home.
 8 Q What happened next?
 9 A Well, the next test is the nine-step heel-to-toe.
 10 Q And on this occasion, tell me what you recall your saying to Mr. Book and what his response was.

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1 After I ask them, you know, the next test is the one-leg stand, I explain it and I demonstrate it and ask them, you know, Can you do it? Do you want to do it? And I don't think he was taking any of it seriously.
 2 Q Well, can you be more descriptive in terms of him asking you and what his response was? I understand you formed the impression he wasn't taking it seriously.
 3 Can you tell me in more detail what your words were to him in terms of that test and his response?
 4 A What I said?
 5 Q Yes.
 6 A I'll tell you how I describe it.
 7 Q I'm trying to segregate what your typical practice is and what you recall on that day.
 8 Do you recall what you said to him?
 9 A I asked him to do the one-leg stand and I demonstrated it. Sir, you've got to keep your hands by your side, raise one of your

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1 A I demonstrate the test, you know, try to keep your hands by your side, walk heel-to-toe on an imaginary line counting out loud each step, one, two, three. I normally demonstrate to three. I tell them when you get to nine, go, Nine, simply turn around, and use again an imaginary line and attempt to walk heel-to-toe for nine more steps, counting out loud with your hands by your side.
 2 Q And what was Mr. Book's response?
 3 A I think he still thought it was a joke. But he -- if I can recall, he attempted that test.
 4 Q What happened?
 5 A He never completed it.
 6 Q Why not?
 7 A He just never completed it.
 8 Q Because he couldn't or because he didn't want to? What happened?
 9 A I think part of it was he didn't want to. I think, again, he thought the whole thing was a joke. He just wanted to go home.
 10 Q What did you see him do?

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1 A I don't recall the exact --
 2 Q Did he appear to you to be -- how did he
 3 appear to be walking to you?
 4 A He was unsteady.
 5 Q Did he have a limp?
 6 A I don't recall if he had a limp, but he was
 7 unsteady.
 8 Q Did you form an opinion as to whether the
 9 unsteadiness was due to age or something
 10 else?
 11 A At the end of all the tests?
 12 Q At any time.
 13 A I formed the opinion that he was operating
 14 his motor vehicle under the influence after
 15 the tests.
 16 Q In terms of his unsteadiness, did you form
 17 an opinion as to what was the cause of the
 18 unsteadiness?
 19 A My opinion, he was under the influence.
 20 Q Did you make any determination, apart from
 21 that, as to whether his age contributed to
 22 any unsteadiness?
 23 A It could have. His age could have
 24 contributed, but my opinion was he was

1 under the influence.
 2 Q I understand it could have. But what did
 3 you determine? Did you determine that his
 4 age factored -- I understand your
 5 testimony, you believe he was intoxicated.
 6 A Yes.
 7 Q Did you make a determination as to whether
 8 any part of his unsteadiness was due to his
 9 age?
 10 A It's a factor while we're doing the test.
 11 As I told you before, I've modified tests
 12 before. It is a factor that you look into.
 13 But at that point, I determined that he was
 14 under the influence. That's the best way I
 15 can answer that question.
 16 Q Okay. So you didn't -- would it be
 17 accurate to say, then, that you did not
 18 make a determination as to what impact, if
 19 any, his age had on his unsteadiness?
 20 A At that point?
 21 Q Yes.
 22 A No. It was a factor, as everything is, you
 23 know, when you're making that
 24 determination.

1 Q What happened after the nine-step test?
 2 A I formed the opinion he was operating under
 3 the influence. Trooper Ferrazzani asked
 4 me. I told him that I formed the opinion
 5 that he was operating under the influence,
 6 and Mr. Book was placed under arrest at
 7 that point.
 8 Q How long did the tests take?
 9 A Probably only takes about -- I mean, it can
 10 take five to ten minutes. It might be a
 11 little less; it might be a little more.
 12 Q How long did it take on this occasion?
 13 A Again, I don't recall exactly.
 14 Q Where were you when you were performing the
 15 test?
 16 A On Route 1 or, you know --
 17 Q Near the guardrail location --
 18 A We were as close as we could be off to the
 19 right.
 20 Q I need to finish the question.
 21 Were you near the location
 22 where Mr. Book was against the guardrail
 23 when you first arrived?
 24 A Yes.

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1 Q Did the test take -- to your recollection,
 2 did the test take more or less than ten
 3 minutes?
 4 A I'd say about ten, that I can recall, maybe
 5 less.
 6 Q How did it come about that you had further
 7 communication with Trooper Ferrazzani after
 8 administering the test?
 9 A Well, he was there, and I just told him.
 10 He had come back to the -- towards us.
 11 Q So Ferrazzani returned to where you were?
 12 A At some point, yeah.
 13 Q Was there a delay between your completion
 14 of the test and Trooper Ferrazzani
 15 arriving?
 16 A I don't recall exactly if there was.
 17 Q Who placed Mr. Book under arrest?
 18 A Trooper Ferrazzani did.
 19 Q Where were you when that was happening?
 20 A I was right there, right next to him.
 21 Q And what happened after he was arrested?
 22 A Mr. Book was placed in the back seat of
 23 Trooper Ferrazzani's cruiser.
 24 Q And what happened next?

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25 (Pages 94 to 97)